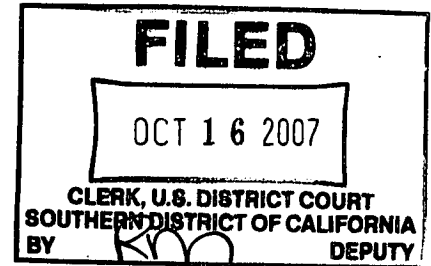


John Mortis
 Name
 33153-112
 Prison Number
 Cornell Cor. Big Springs TX
 Place of Confinement

2254	✓	1983
FILING FEE PAID		
Yes		No ✓
HFP MOTION FILED		
Yes		No ✓
COPIES SENT TO		
Court	✓	ProSe



UNITED STATES DISTRICT COURT
 SOUTHERN DISTRICT OF CALIFORNIA

John Ezekeil Mortis
 Full Name of Movant

VS

UNITED STATES OF AMERICA

'07CV 2019 JAH CAB

Case No. _____
 (Issued by Clerk's Office)

MOTION, PURSUANT TO TITLE
 28 U.S.C. SEC. 2255

(If movant has a sentence to be served in the FUTURE under a federal judgment which he wishes to attack, he should file a motion in the federal court which entered the judgment.)

**MOTION TO VACATE, SET ASIDE, OR CORRECT SENTENCE BY
 A PERSON IN FEDERAL CUSTODY**

INSTRUCTIONS—READ CAREFULLY

- 1) This motion must be legibly handwritten or typewritten and signed by the movant. Any false statement of a material fact may serve as the basis for prosecution and conviction for perjury. All questions must be answered concisely in the proper space on the form. Where more room is needed to answer any question use reverse side of sheet.
- 2) Additional pages are not permitted. No citation of authorities need be furnished. If briefs or arguments are submitted, they should be submitted in the form of a separate memorandum.
- 3) Upon receipt, your motion will be filed if it is in proper order. No fee is required with this motion.
- 4) If you do not have the necessary funds for transcripts, counsel, appeal and other costs connected with a motion of this type you may request permission to proceed in forma pauperis, in which event you must execute the last page, setting forth information

establishing your inability to pay costs. If you wish to proceed in forma pauperis, you must have an authorized officer at the penal institution complete the certificate as to the amount of money and securities on deposit to your credit in any account in the institution.

- 5) Only judgments entered by one court may be challenged in a single motion. If you seek to challenge judgments entered by different judges or divisions either in the same district or in different districts, you must file separate motions as to each judgment.
- 6) Your attention is directed to the fact that you must include all grounds for relief and all facts supporting such grounds for relief in the motion you file seeking relief from any judgment of conviction.
- 7) When the motion is fully completed, the original and two copies must be mailed to the Clerk of the United States District Court, 880 Front Street Suite 4290, San Diego, California 92101-8900.
- 8) Motions which do not conform to these instructions will be returned with a notation as to the deficiency.

MOTION

1. Name and location of court which entered the judgment of conviction under attack
Superior Court of California, Los Angeles County Cnt. Dept #28
2. Date of judgment of conviction 04-27-98
3. Length of sentence 5 years , 85 % Sentencing Judge Hon. Marsha N. Revel
4. Nature of offense or offenses for which you were convicted p.c. 245 (A)(2)
Assault with a deadly weapon and 12022.5 (A)(1)
5. What was your plea? () Not Guilty (X) Guilty () Nolo contendere
If you entered a guilty plea to one count or indictment, and a not guilty plea to another count or indictment, give details: I entered a guilty plea for one count because I was encouraged by my counsel to cop to two years with half time, but when I changed my plea from not guilty to guilty, the judge objected citing its a violent crime and that I cannot be given half time, instead I received 2 years with a 3 year enhancement = 85% of 5 years.
6. Kind of trial: () Jury () Judge Only N/A
7. Did you testify at the trial? () Yes (X) No
8. Did you appeal from the judgment of conviction? () Yes (X) No

9. If you did appeal, answer the following:

- (a) Name of court _____
(b) Result _____
(c) Date of result _____

10. Other than a direct appeal from the judgment of conviction and sentence have you previously filed any petitions, applications or motions with respect to this judgment in any federal court? () Yes (X) No

11. If your answer to 10 was "yes," give the following information:

- (a) 1. Name of court _____
2. Nature of proceeding _____

3. Grounds raised _____

4. Did you receive an evidentiary hearing on your petition, application or motion?
() Yes () No

5. Result _____

6. Date of result _____

(b) As to any second petition, application or motion give the same information:

1. Name of court _____

2. Nature of proceeding _____

3. Grounds raised _____

4. Did you receive an evidentiary hearing on your petition, application or motion?
() Yes () No

5. Result _____

6. Date of result _____

(c) As to any third petition, application or motion, give the same information:

1. Name of court _____

2. Nature of proceeding _____

3. Grounds raised _____

4. Did you receive an evidentiary hearing on you petition, application or motion?
() Yes () No

(d) Did you appeal, to an appellate federal court having jurisdiction, the result of action taken on any petition, application or motion?

- | | | |
|--------------------------|---------|--------|
| (1) First petition, etc. | () Yes | (X) No |
| (2) Second petition etc. | () Yes | (X) No |
| (3) Third petition etc. | () Yes | (X) No |

(e) If you did not appeal from the adverse action on any petition, application or motion, explain briefly why you did not:

I did not appeal because I was indigent therefor unable
to afford an attorney. I was also not privy to the
filing procedures.

12. State concisely every ground on which you claim that you are being held unlawfully.

CAUTION: If you fail to set forth all grounds in this motion, you may be barred from presenting additional grounds at a later date.

For your information, the following is a list of the most frequently raised grounds for relief in these proceedings. Each statement preceded by a letter constitutes a separate ground for possible relief. You may raise any grounds which you have other than those listed. However, you should raise in this motion all available grounds (relating to this conviction) on which you base your allegations that you are being held in custody unlawfully.

If you select one or more of these grounds for relief, you must allege facts in support of the ground or grounds which you choose. Do not check any of the grounds listed below. The petition will be returned to you if you merely check (a) though (j) or any one of these grounds.

- (a) Conviction obtained by plea of guilty which was unlawfully induced or not made voluntarily or with understanding of the nature of the charge and the consequences of the plea.
- (b) Conviction obtained by use of coerced confession.
- (c) Conviction obtained by use of evidence gained pursuant to an unconstitutional search and seizure.
- (d) Conviction obtained by use of evidence obtained pursuant to an unlawful arrest.
- (e) Conviction obtained by a violation of the privilege against self-incrimination.
- (f) Conviction obtained by the unconstitutional failure of the prosecution to disclose to the defendant evidence favorable to the defendant.
- (g) Conviction obtained by a violation of the protection against double jeopardy.
- (h) Conviction obtained by action of a grand or petit jury which was unconstitutionally selected and impaneled.
- (i) Denial of effective assistance of counsel.
- (j) Denial of right of appeal.

13. If any of the grounds listed in 12A, B, C and D were not previously presented, state briefly what grounds were not so presented, and give your reasons for not presenting them: _____

14. Do you have any petition or appeal not pending in any court as to the judgment under attack? Yes () No (X)
15. Give the name and address, if known, of each attorney who represented you in the following stages of the judgment attacked herein:
- (a) At preliminary hearing _____
- (b) At arraignment and plea Assigned public defendant.
- (c) At trial _____
- (d) At sentencing Steven Rodriguez.
- (e) On appeal _____
- (f) In any post-conviction proceeding _____
- (g) On appeal from any adverse ruling in a post-conviction proceeding _____
16. Were you sentenced on more than one count of an indictment, or on more than one indictment/information, in the same court and at approximately the same time? Yes (X) No ()
17. Do you have any future sentence to serve after you complete the sentence imposed by the judgment under attack? Yes (X) No ()
- (a) If so, give name and location of court which imposed sentence to be served in the future: Federal court of Los Angeles, Central Div.
- (b) And give date and length of sentence to be served in the future: 08 months
- (c) Have you filed, or do you contemplate filing, any petition attacking the judgment which imposed the sentence to be served in the future? Yes () No (X)

- A. Conviction obtained by plea of guilty which was unlawfully
Ground One: induced or not made voluntarily or with understanding of the
of the nature of the charge and the consequences of the plea.

Supporting FACTS (tell your story briefly without citing cases or law):

I was told by my counsel to plead guilty to two years with
half deal, or face 19 years at trial. I was under the impression
I was receiving 2 years with half deal. It was never communicated
me I would receive a 5 year sentence.

- B. Ground Two: Conviction obtained by use of coerced confession.

Supporting FACTS (tell your story briefly without citing cases or law): The victim Rita
Mortis lied to the officer that I shot the gun in the direction
of her and her friend Larry Anderson, but I did'nt. After she cha-
nged her story to the truth, the D.A. threatened her with jail ci-
ting perjury if she did'nt hold to her initial story. (2) The ot-
her victim Larry Anderson lied also, claiming he feared for his
life and would like to see me incarcerated and deported to my na-
tive country Belize. He was motivated by the fact that he was
sexually involved with my wife in the home where me and said wi-
fe and three children all reside.

- C. Ground Three: Conviction obtained by use of evidence joined pers-
uant to unconstitutional search and seizure.

Supporting FACTS (tell your story briefly without citing cases or law): I John Mortis
was the only adult at the 1400 65st address. The police ordered
me to come outside and proceeded to search my home without
consent, without presenting or showing a search warrant.

- D. Ground Four: Conviction obtained unconstitutionally, failure of the
prosecution to disclose evidence favorable to the defendant.

Supporting FACTS (tell your story briefly without citing cases or law): The D.A. claimed
I lied about being employed at Bekins moving comp. which hurt
my credibility. Because I truly was employed by various sub-
contractors. Robie Roberson, Bobby Cox, Jose Almatine, Mick Mata
Mack Rush, Charlie Younge, Charlie Henderson, Tno, Malcom, Adrian
Mike Giles, George.

E. Ground Five: Denial of effective assistance of counsel.

Supporting FACTS : At the hearing before the plea bargain ,my attorney Steven Rodriguez told me,he was not working for me,but for the person paying him,my wife Rita Mortis who is also the victim.

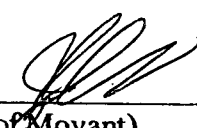
Wherefore, movant prays that the court grant him all relief to which he/she may be entitled in this proceeding.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on

9-25-07

(Date)



(Signature of Movant)

(Signature of Attorney, if any)

JS44

(Rev. 07/89)

CIVIL COVER SHEET

The JS-44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON THE SECOND PAGE OF THIS FORM.)

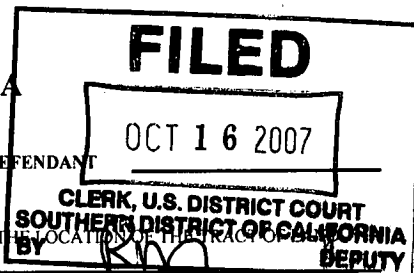
I (a) PLAINTIFFS

John Mortis

(b) COUNTY OF RESIDENCE OF FIRST LISTED PLAINTIFF
(EXCEPT IN U.S. PLAINTIFF CASES)

2254	1983
FILING FEE PAID	
Yes	No
HP MOTION FILED	
Yes	No
COPIES SENT TO	
Court	ProSe

USA



(c) ATTORNEYS (FIRM NAME, ADDRESS, AND TELEPHONE NUMBER)

John Mortis
2001 Rickabough Drive
Big Spring, TX 79720
33153-112

ATTORNEYS (IF KNOWN)

'07CV 2019 JAH CAB

II. BASIS OF JURISDICTION (PLACE AN x IN ONE BOX ONLY)

- ☐ 1 U.S. Government Plaintiff ☒ 3 Federal Question (U.S. Government Not a Party)
- ☐ 2 U.S. Government Defendant ☐ 4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (PLACE AN x IN ONE BOX FOR PLAINTIFF AND ONE BOX FOR DEFENDANT)

- | | | | |
|----------------------------|----------------------------|----------------------------|----------------------------|
| PT | DEF | PT | DEF |
| <input type="checkbox"/> 1 | <input type="checkbox"/> 1 | <input type="checkbox"/> 4 | <input type="checkbox"/> 4 |
| <input type="checkbox"/> 2 | <input type="checkbox"/> 2 | <input type="checkbox"/> 5 | <input type="checkbox"/> 5 |
| <input type="checkbox"/> 3 | <input type="checkbox"/> 3 | <input type="checkbox"/> 6 | <input type="checkbox"/> 6 |
- Citizen of This State Incorporated or Principal Place of Business in This State
- Citizen of Another State Incorporated and Principal Place of Business in Another State
- Citizen or Subject of a Foreign Country Foreign Nation

IV. CAUSE OF ACTION (CITE THE US CIVIL STATUTE UNDER WHICH YOU ARE FILING AND WRITE A BRIEF STATEMENT OF CAUSE. DO NOT CITE JURISDICTIONAL STATUTES UNLESS DIVERSITY).

28 U.S.C. 2254

V. NATURE OF SUIT (PLACE AN x IN ONE BOX ONLY)

CONTRACT	TORTS		FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> Marine <input type="checkbox"/> Miller Act <input type="checkbox"/> Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excl. Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veterans Benefits <input type="checkbox"/> 160 Stockholders Suits <input type="checkbox"/> Other Contract <input type="checkbox"/> 195 Contract Product Liability	PERSONAL INJURY <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury	PERSONAL INJURY <input type="checkbox"/> 362 Personal Injury-Medical Malpractice <input type="checkbox"/> 365 Personal Injury-Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability PERSONAL PROPERTY <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 610 Agriculture <input type="checkbox"/> 620 Other Food & Drug <input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC881 <input type="checkbox"/> 630 Liquor Laws <input type="checkbox"/> 640 RR & Truck <input type="checkbox"/> 650 Airline Regs <input type="checkbox"/> 660 Occupational Safety/Health <input type="checkbox"/> 680 Other LABOR <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Mgmt. Relations <input type="checkbox"/> 730 Labor/Mgmt. Reporting & Disclosure Act <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Empl. Ret. Inc. Security Act	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 PROPERTY RIGHTS <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 840 Trademark SOCIAL SECURITY <input type="checkbox"/> 861 HIA (13958) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(e)) FEDERAL TAX SUITS <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS - Third Party 26 USC 7609	<input type="checkbox"/> 400 State Reappointment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce/ICC Rates/etc. <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 810 Selective Service <input type="checkbox"/> 850 Securities/Commodities Exchange <input type="checkbox"/> 875 Customer Challenge 12 USC <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 892 Economic Stabilization Act <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 894 Energy Allocation Act <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 900 Appeal of Fee Determination Under Equal Access to Justice <input type="checkbox"/> 950 Constitutionality of State <input type="checkbox"/> 890 Other Statutory Actions
REAL PROPERTY <input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Tort to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property	CIVIL RIGHTS <input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 444 Welfare <input type="checkbox"/> 440 Other Civil Rights	PRISONER PETITIONS <input type="checkbox"/> 510 Motions to Vacate Sentence Habeas Corpus <input checked="" type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights			

VI. ORIGIN (PLACE AN x IN ONE BOX ONLY)

- ☒ 1 Original Proceeding ☐ 2 Removal from State Court ☐ 3 Remanded from Appellate Court ☐ 4 Reinstated or Reopened ☐ 5 Transferred from another district (specify) ☐ 6 Multidistrict Litigation ☐ 7 Appeal to District Judge from Magistrate Judgment

VII. REQUESTED IN COMPLAINT:

☐ CHECK IF THIS IS A CLASS ACTION UNDER f.r.c.p. 23

DEMAND \$

Check YES only if demanded in complaint:

JURY DEMAND: ☐ YES ☐ NO

VIII. RELATED CASE(S) IF ANY (See Instructions): JUDGE

Docket Number

DATE 10/16/2007

SIGNATURE OF ATTORNEY OF RECORD

R. Mullen